IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.312 OF 2005

Shri Vishnupant Dattatraya Khalate & Anr. : Petitioners
(Orig.Deft. 1 & 2)

V/s.

Sou. Prajawala Sudhakar Dongare & Ors. : Respondents
(No.1 & 2 Orig.Plaintiffs
3 to 10 Orig.deft.3 to 10)

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Mr.J.Shekhar i/b. J. Shekhar & Co., for the petitioners.

Mr.P.A.Paste for the respondent nos.1 and 2.

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CORAM : S.A. BOBDE, J.

July 4, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Paste, learned counsel, appears and waives service of rule on behalf of the respondent nos.1 and 2.

Heard by consent.

2. The petitioners challenge the order below exh.51 and 61 refusing to set aside the ex parte order against them. The petitioners are the defendant nos.1 and 2 in a suit. The trial Court in pursuance of the judgement of this

Court in Chintaman Kaklij v. Shivaji Gadhe, reported in 2004 (4) Mh.L.J. 739, in which it is held that written statement can be taken on record after 90 days in "exceptional and special circumstances" has considered the circumstances put forth by the petitioners and come to the conclusion that there are no special and exceptional circumstances.

3. The petitioners contended before the trial Court, as also here, that the petitioner no.1, who is the defendant no.1, was bed-ridden and there are medical certificates issued by Dr.Gulavani on 11.10.2004, 21.8.2004 and 21.12.2004 that he was advised bed-rest. The certificates are to the effect that he is taking treatment since 22.2.2003.

4. Admittedly, the petitioners were served on 29.3.2004. The order to proceed ex parte was passed on 2.7.2004. There is no whisper about the inability of the petitioner no.2 i.e. the defendant no.2 as to the reason why he did not take steps to file written statement. Admittedly, he was under no functional disability of any kind. Moreover, the trial Court in its judgement has come to the conclusion that there is absolutely no truth in the petitioner no.2’s version that he was unable to attend the

Court, since on 1.7.2004 i.e. one day before the order to proceed ex parte was passed, he appeared before the Sub-Registrar for executing the sale deed in respect of the suit properties. In these circumstances, I find no infirmity, jurisdictional or otherwise, in the trial Court having come to the conclusion that the petitioners have not shown sufficient cause for setting aside the order and extending the time to file written statement. It appears that the petitioners have not been candid with the Court as to the true facts.

5. In the circumstances, there is no merit in the petition which is hereby dismissed. The rule stands discharged.

S.A. BOBDE, J.